

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

MAURICE GORDON, SR., et al.,	)	21-CV-4861 (KMW/AMD)
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
RANDALL WETZEL, et al.,	)	Camden, NJ
	)	January 25, 2022
Defendants.	)	12:06 p.m.

TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE  
BEFORE THE HONORABLE ANN MARIE DONIO  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 (The following telephonic conference was heard  
2 at 12:06 p.m.)

3 THE COURT: Good afternoon, everyone. We're on the  
4 record for a status conference in Case No. 21-4861, Estate of  
5 Gordon vs. Wetzels, et al.

6 This conference call is being electronically  
7 recorded and I would ask that each time you speak, you  
8 identify yourself for the record.

9 May I have the appearances, please, beginning with  
10 plaintiffs' counsel.

11 MR. WIESNER: Good day, Your Honor. This is Neal  
12 Wiesner for the plaintiff.

13 MR. WAGSTAFF: Good morning, Your Honor -- or,  
14 excuse me, good afternoon. This is William Wagstaff for the  
15 plaintiffs.

16 THE COURT: All right. Thank you. For defense?

17 MR. FREEMAN: Good afternoon, Your Honor. Marvin  
18 L. Freeman appearing on behalf of the State defendants.

19 MR. INTRIAGO: Good afternoon, Your Honor. Eric  
20 Intriago for State defendants.

21 MS. CHEWNING: And good afternoon, Your Honor.  
22 Kerri Chewning from Archer & Greiner on behalf of Trooper  
23 Wetzels.

24 MS. PEARL: Good afternoon, Your Honor. Amy Pearl  
25 from Archer & Greiner also on behalf of Trooper Wetzels.

## Colloquy

5

1 THE COURT: All right. Thank you. That's  
2 everyone, correct?

3 MR. WIESNER: Yes, Your Honor.

4 THE COURT: All right. We have the amended  
5 complaint. We have an answer filed by defendant Wetzel, and  
6 we have a motion filed in response by the State defendants  
7 that was just filed a few days ago. It will be before the  
8 district judge.

9 So where does that leave us and how do we next  
10 proceed?

11 MR. WIESNER: Your Honor, this is Neal Wiesner, if  
12 I may speak. We did, as you directed, have a conference  
13 among ourselves seeing whether we could work out some -- some  
14 kind of accommodation with respect to discovery.  
15 Unfortunately -- well, unfortunately from our perspective,  
16 from plaintiffs' perspective, defendants just want to  
17 blockade discovery.

18 I think Officer Wetzel is asserting a 5th Amendment  
19 right, but we have, as we did in response to the prior motion  
20 for a stay, we -- we suggested that we do not expect to need  
21 any discovery from Officer Wetzel until many, many months  
22 from now. We can delay that.

23 All the discovery we would be getting regarding  
24 Wetzel would be coming through the State defendants. There's  
25 actually relatively little we could get from Wetzel, other

1       than of course at some point deposing him.

2               And -- and to the extent that the State defendants  
3       are -- are concerned about unnecessary disclosures or  
4       unnecessary burdens of disclosure, we have also suggested  
5       that -- that depositions, they're many months away and by  
6       that time, you know, God willing, the summary judgment motion  
7       will be decided and maybe even the grand jury will have  
8       acted, but -- but the material that we -- we would be seeking  
9       from the State defendants is -- is largely material whether  
10      they're in the case or out of the case, we -- we would be  
11      asking for anyway.

12             So it is -- I mean, for instance, in terms of  
13      statistics, I mean we would want that whether they were in  
14      the case or out of the case, and there's no reason not to  
15      disclose, particularly when they've taken the position that  
16      -- of, you know, tremendous transparency and openness  
17      regarding these statistics. And they also -- you know, it's  
18      hard for them to claim burden when they -- they have  
19      proclaimed in papers that -- that they have an office within  
20      the agency, within the Attorney General's office that stays  
21      on top of all these statistics.

22             So in terms of declining to disclose statistical  
23      information, we see no rationale regarding that. We just see  
24      it as obstructionist. And in terms of the grand jury  
25      material, we would certainly be reasonable, you know, if

1       there was any individuated items that they say, oh, no, this  
2       could compromise the grand jury proceedings. But they just  
3       want again a blanket prohibition and we think that's  
4       unreasonable.

5               THE COURT: Okay. Let me -- let me -- before I  
6       hear from the defendants, let me address it this way. I'm  
7       going to do a scheduling order. Is there agreement by all  
8       the parties to stay depositions at this time?

9               MR. WIESNER: Your Honor, this is Neal Wiesner for  
10      the plaintiff. Certainly we would -- I mean, yes, is the  
11      short answer, yes.

12              MR. FREEMAN: The State defendants agree, Your  
13      Honor.

14              MS. CHEWNING: Your Honor, as an initial step, but,  
15      yes, I would certainly agree with that from Trooper Wetzel's  
16      perspective as well.

17              THE COURT: All right. So the depositions will be  
18      stayed. Now, I don't know what the defendants' position is  
19      on written discovery, but what I'm going to do is allow the  
20      discovery to be served and then if the defendants believe  
21      there's a basis to stay, they can make a motion to stay,  
22      review the motion.

23              I don't know what kind of discovery the plaintiff's  
24      going to serve, and the plaintiffs point that the discovery  
25      with respect to certain statistics from the State is going to

1 be sought out regardless of whether defendants -- the State  
2 defendants get -- have their motion to dismiss granted.

3 So it seems to me that the best way to go is get a  
4 deadline for the service of initial discovery and then if  
5 there's a need for a stay, a party can make a stay in the --  
6 stay of written discovery in the confines of what's actually  
7 been served.

8 Doesn't that make the -- is that a way the parties  
9 agree to proceed?

10 MS. CHEWNING: Your Honor, this is Kerri Chewning  
11 for Trooper Wetzel. My only issue here is that the grand  
12 jury investigation from the information that is available to  
13 me, which is limited, of course, is still underway; it has  
14 not yet been presented.

15 So the question of Trooper Wetzel -- you know,  
16 discovery addressed to Trooper Wetzel or related to  
17 statements or comments, or anything that could potentially  
18 create a 5th Amendment problem, you know, sort of is going to  
19 be problematic from our perspective, at least until we get  
20 some direction on that, on the outcome of the grand jury  
21 issue.

22 MR. WIESNER: Your Honor, this is Neal Wiesner.  
23 With your permission, we would agree not to serve any  
24 discovery demands on Trooper Wetzel at this time, but just  
25 the discovery -- perhaps discovery regarding Trooper Wetzel,



1 but discovery from the State only.

2 MR. FREEMAN: Your Honor, this is Marvin Freeman.  
3 In response to the Court's question, we agree with the  
4 Court's position. If they want to serve written discovery,  
5 they certainly can. Our position is that the case should be  
6 stayed and we will respond accordingly or present a motion,  
7 if necessary, upon receipt of the written discovery demand.

8 THE COURT: Well, if you're going to make a motion  
9 regardless of what it says, then you need to make the motion  
10 now. I know you made it before, but -- because I don't want  
11 you to wait 30 days and then say, okay, now I'm making a  
12 motion to stay, because the standard for a stay when there's  
13 a pending dispositive motion requires the Court to analyze a  
14 number of items, and I'm hard-pressed to see how the State  
15 would have any prejudice and meet that standard, if what is  
16 being asked can be asked by way of subpoena if they're even  
17 out of the case.

18 So the burden of depositions is already being  
19 stayed. The plaintiff has agreed to stay all discovery  
20 against the individuals who may be subject to criminal  
21 charges. So if the State's position is, well, there's a  
22 motion to dismiss so we're moving to stay, then you need to  
23 file that motion or refile it and address that.

24 And I'm just going to be clear, there is no stay of  
25 written discovery from the State unless the Court grants a

1 stay. So I'm opening up discovery, written discovery only,  
2 by agreement of all the parties. The stay is -- there's a  
3 stay of depositions and there's a stay as to discovery  
4 directed -- directly to Officer Wetzel. So Mr. --

5 MR. FREEMAN: The State will -- we will refile our  
6 motion to stay, Your Honor.

7 THE COURT: Okay. You can refile it and address  
8 the issues that we've talked about, including what prejudice  
9 there would be, if any, in granting the stay. And in the  
10 meantime, though, the plaintiff serves your discovery, your  
11 30-day clock will start. I want to be clear about that so  
12 you're on notice. The fact that you're raising a stay does  
13 not stay the case. Okay?

14 MR. WIESNER: Thank you, Your Honor. This is Neal  
15 Wiesner.

16 MR. FREEMAN: That's fine, Your Honor.

17 THE COURT: Okay. Is there anything further then  
18 today?

19 MS. CHEWNING: Your Honor, just to be clear, this  
20 is Kerri Chewning, would the -- if there's an agreement for  
21 the plaintiffs not to seek discovery from Trooper Wetzel,  
22 should we be preparing and serving our discovery at this  
23 point? It seems that may be a little lopsided. I don't know  
24 if we should -- if we should agree that the stay is mutual  
25 with respect to discovery on that front.

1 THE COURT: Mr. Wiesner?

2 MR. WIESNER: Your Honor, this is Neal Wiesner.  
3 What's good for the goose is good for the gander, Your Honor.  
4 In other words, if -- if we're restraining ourselves  
5 completely, you know, there's no reason for us to be on a  
6 different track with respect to Trooper Wetzel.

7 THE COURT: All right. Well, the stay vis a vis  
8 defendant Wetzel, both affirmative and defense oriented, is  
9 stayed -- is applicable, meaning the stays of all claims and  
10 defenses vis a vis Wetzel. There's no stay as it relates to  
11 the plaintiff and the State defendants other than the stay of  
12 depositions. And we will have a telephone conference in 45  
13 days. How's that sound?

14 MR. WIESNER: Thank you, Your Honor.

15 MR. FREEMAN: Your Honor, this is Marvin Freeman.  
16 Just -- just one question. In addition to the motion to stay  
17 that we intend to file, if we get written discovery to which  
18 we would also like to -- to -- that will affect a stay or  
19 that we would file that we would want to stay as well, are we  
20 required to file another motion related to that written  
21 discovery?

22 THE COURT: Well, you're moving to stay all  
23 discovery, so I don't know -- if that's your point, that's  
24 your question, I don't think you would need to file a second  
25 motion to say and, by the way, we include in our motion

1       interrogatory three and document request number five.

2               MR. FREEMAN:   But --

3               THE COURT:   I mean you're making a very broad  
4       request for a stay.  You're not willing to take the position  
5       that you will answer any discovery, am I correct?

6               MR. FREEMAN:   That is correct, Your Honor.  The  
7       only concern is that if our motion is not decided within the  
8       time we are required to respond to written discovery, then we  
9       would need to know how to proceed.

10              THE COURT:   You will need to respond or make an  
11       application or see if the defense -- the plaintiffs' counsel  
12       agrees to stay that period of time pending a new resolution  
13       by the Court of your motion.

14              MR. FREEMAN:   Thank you, Your Honor.

15              THE COURT:   The first step is to get your motion  
16       filed to stay, since you're taking the position that all  
17       matters should be stayed, and then when the plaintiff sends  
18       you the discovery request, you can take a look at it.

19              I would invite you to take a very thorough look at  
20       it because I can tell you now that I'm hard-pressed to see  
21       how every single interrogatory or document request should be  
22       stayed, if the plaintiff has the right to obtain the  
23       information anyway by way of third-party subpoena if your  
24       motion is granted.

25              So that being said, if you want to make your motion

1 and then supplement it when you get the discovery, to see  
2 more particular as to what it is you're seeking to stay, and  
3 you certainly are welcome to do that. And once you file that  
4 motion, as you get closer to the discovery time to respond,  
5 you can reach out to plaintiffs' counsel and see if  
6 plaintiffs' counsel agrees to a brief stay pending resolution  
7 of your motion to stay. And, if not, you can send me a  
8 letter.

9 MR. FREEMAN: Okay. We'll do so.

10 THE COURT: Is there anything further then for  
11 today?

12 MR. WIESNER: No, Your Honor. Thank you. This is  
13 Neal Wiesner.

14 MS. CHEWNING: No, Your Honor. Thank you.

15 MR. FREEMAN: Nothing further from State  
16 defendants.

17 MR. WAGSTAFF: Nothing further --

18 THE COURT: Thank you. You all stay -- oh, I'm  
19 sorry. Go ahead.

20 MR. WAGSTAFF: No, I did want to ask a question.  
21 You said you were going to be issuing a schedule earlier and  
22 that there was going to be a schedule. Is that the same or  
23 did this discussion change --

24 THE COURT: Well, the schedule is -- the schedule  
25 is that fact discovery as indicated today may -- may begin,

1 subject to the stays that have been agreed to. We'll have a  
2 telephone call in 45 days. That's basically all I can do  
3 today.

4 MR. WAGSTAFF: Okay.

5 THE COURT: I'm not going to give you a fact  
6 discovery end date until I know when the stay is going to  
7 end. Okay?

8 MR. WIESNER: Thank you, Your Honor.

9 MR. WAGSTAFF: Thank you, Your Honor.

10 THE COURT: All right.

11 MS. CHEWNING: Thank you, Your Honor.

12 THE COURT: All right. Counsel, you all have a  
13 good day and stay safe. We are adjourned.

14 \* \* \* \* \*

15 C E R T I F I C A T I O N

16 I, Roxanne Galanti, court approved transcriber,  
17 certify that the foregoing is a correct transcript from the  
18 official electronic sound recording of the proceedings in the  
19 above-entitled matter.

20  
21 /s/Roxanne Galanti

March 2, 2022

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